

Assistant Commissioner of Vs. Satya Narayan Agarwalla

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Court : Income Tax Appellate Tribunal ITAT Kolkata

Decided On : Mar-08-2002

Reported in : (2002)255ITR69(Kol.)

Judge : B Mitra, P Kumar

Appellant : Assistant Commissioner of

Respondent : Satya Narayan Agarwalla

Judgement :

1. This appeal, filed by the Revenue, is directed against the order dated February 25,1997, passed by the Commissioner of Income-tax (Appeals)-II, Calcutta, in the matter of order under Section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), for the assessment year 1994-95. The Revenue is aggrieved of the Commissioner of Income-tax (Appeals) order for deleting the addition of Rs. 4 lakhs in the hands of the assessee, even though the said addition was made on the basis of the assessee's own statement, both the grounds of appeal relate to this grievance.

2. Briefly stated, material facts of the case are that the assessee's statement was recorded during the course of survey under Section 133A of the Act of one Bansi Tyre House Pvt. Ltd., Exhibition Road, Patna.

During the course of his deposition, the assessee declared Rs. 4 lakhs as his income and that the aforesaid income is with the assessee in the form of cash.

Based on this addition alone and without any corroborative evidence, the Assessing Officer made an addition of Rs. 4 lakhs to the returned income of the assessee. In appeal, the Commissioner of Income-tax (Appeals) deleted the aforesaid addition by observing as follows : "It is none of the imputations of the Assessing Officer that he had in his possession any tangible material which may, even remotely, suggest that the appellant was found in possession of or accountable for any undisclosed income, business or transaction. The statement vide question No. 22 is evidently nothing more than a statement recorded in the course of survey. The stand of the Assessing Officer could have been countenanced, had this statement being recorded not in the course of survey, but in the course of a search and in accordance with the provisions of Section 132(4). The statement can be taken seriously if it is seen that the matter was pursued for ensuring implementation of the so called disclosure of business income of Rs. 4,00,000. The fact that the investigation being at Patna did not proceed further to secure payment of any taxes in pursuance of the declaration procured at the time of survey clearly indicates the seriousness or should I say lack of it, with which the survey team processed this statement. Assessing Officer it appears, overlooked the basic point that presence of the appellant at the site of survey had nothing to do with his (appellant) own affairs, business or income. Circumstances under which such a statement gets recorded can be appreciated when it is noted that the appellant had been under long medical treatment and that he was taken to the spot from his residence to officiate on behalf of one of the directors of the company. The appellant is not a functionary of Bansi Tyres House (P.) Ltd. and the primary purpose of recording the statement from him was solely in connection with the affairs of the company.

Business establishment of the appellant was located at Kisangunge and it was for purposes of his own treatment that he was residing at Patna when the survey team visited the premises of the private limited company. Decision in assessment accordingly appears to have been made with scant regard for facts as also the canons of law.

Even if for arguments sake it is presumed that the appellant did make a statement proposing disclosure of income that the statement was seriously and sincerely

made in sound condition of health and mind, that the disclosure was in regard to the appellant's own income, law is clear that an assessment cannot be made simply on such statement without any material evidence and that there is no principle or authorisation under the statute to prevent the declarant from retracting such statement. Not to speak of a statement recorded in course of survey an admission made in the return of income even is not binding on the assessee if he seeks to change or modify his stand subsequently. This is what is meant when it was observed that... An admission or an acquiescence cannot be a foundation for an assessment, where the income is returned under an erroneous impression or misconception of law. It is always open to an assessee to demonstrate and satisfy the authority concerned that a particular income was not taxable in his hands and that it was returned under an erroneous impression of law". (Abdul Qayume v. CJT [1990] 184 ITR 404, 411 (All)).

4. We have heard the rival contentions, perused the orders of the authorities below and deliberated upon applicable legal positions.

5. We find that the only occasion when an assessee's own statement can be used as an evidence against himself is the statement recorded under Section 132(4) during the course of search and seizure operations, and by virtue of specific legal provision to this effect in the Section 132(4) itself. The general rule of evidence is that no person can be forced to be a witness against himself. In any event in the instant case survey was conducted under Section 133A and on some other assessee, and there is no evidence to indicate the income of Rs. 4 lakhs in the hands of the assessee. Keeping in view all these facts as also entirety of this case, we approve the conclusions arrived at by the Commissioner of Income-tax (Appeals) and decline to interfere in the matter.

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